

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Jeffrey C. Cole,**  
Petitioner-Appellant,

v.

**Dallas County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 10-25-0706**  
**Parcel No. 12-35-222-001**

On June 23, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Jeffrey C. Cole requested a hearing. Realtor Elaine Miller, of Re/Max Real Estate Group, Windsor Heights, Iowa, was designated as his legal representative and represented him at hearing. The Dallas County Board of Review designated County Attorney Wayne M. Reisetter as its legal representative. It was represented by Assessor Steve Helm at hearing. Cole submitted evidence in support of his position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Jeffrey C. Cole, owner of property located at 280 SE Legacy Boulevard, Waukee, Iowa, appeals from the Dallas County Board of Review decision reassessing his property. According to the property record card, the subject property consists of a one-story townhouse having 1382 square feet of living area. The property has no basement and has a slab foundation. The property was built in 2005 and has a 547 square-foot attached garage. The dwelling has a 3-5 quality grade factor and is in normal condition. The subject property is situated in a retirement community subdivision known as Townhomes of Legacy Pointe.

The real estate was classified as residential on the initial assessment of January 1, 2010, and valued at \$194,360; representing \$65,000 in land value and \$129,360 in improvement value. Cole protested to the Board of Review on the grounds the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b), and that there was a change in value since the last reassessment under sections 441.37(1) and 441.35(3). The Board of Review provided partial relief reducing the assessment to \$182,170, allocated at follows: \$65,000 in land value and \$117,170 in improvement value.

Cole filed his appeal with this Board and urged the grounds of error under section 441.37(1)(d) and downward change in value. The claim of error was not previously raised; therefore, we will only address the ground of change in value.

Cole claims \$160,000; allocated \$25,000 to land value and \$135,000 to dwelling value is the actual value and fair assessment of the subject property. He purchased the property in October 2009 for \$160,000. He reports the sale price of the lot for two units was \$50,000 or \$25,000 each. Cole believes his land value should be \$25,000, not \$65,000.

Miller testified on behalf of Cole that the purchase of the subject property was from a bank. However, it was listed for sale on the multiple listing service and the bank had the property appraised at \$160,000. We are mindful of the fact that foreclosure sales are not considered normal transactions and require either exclusion or adequate adjustments to be used as comparable sales. *See Iowa Code § 441.21(1)(b).*

Miller submitted an appraisal completed by Kyle Hout, First Choice Appraisers, LLC, Ankeny, Iowa, that appraised the property at \$165,000 in September 2009. We note the appraisal supports the purchase price, and, therefore, an adjustment for the foreclosure sale may not have been necessary.

According to Miller, an experienced realtor for thirty-five years, the townhomes in retirement communities are not selling, marketing times are prolonged, and foreclosure sales are common. Miller

also reported, in her experience, foreclosure properties are now selling the same as regular market properties and appraisers are using foreclosed property sales as comparables in their appraisals.

Cole also submitted information on three other townhouses to support his claim of change in value. However, two of the properties are located in Polk County, and only one in Dallas County. He compared the 2010 assessment value of the properties to the listing price of each. Because the listing prices are lower than the assessments, he attributes the discrepancy to a downward change in market value. A change in value cannot be established in comparing an assessed value to a sale or listing price. Additionally, while sales from different assessment jurisdictions can be comparable to show fair market value, assessments from different jurisdictions are not comparable.

Miller testified the subject property was offered for sale in 2010 and received an offer for \$160,000. The bank used the same appraisal that Cole used for his purchase. However, the sale was not completed because the buyers were unable to obtain financing.

Miller also testified to a January 2011 sale that is comparable to the subject that sold for \$141,000. This Board notes that the sale took place a year after the January 1, 2010, assessment date. Miller testified basement adds about \$20,000 in market value.

Miller provided credible evidence that the retirement community townhome market in the subject property's area is generally declining. She did provide the foreclosure sale of the subject property and information regarding the acceptance of the offer to purchase the subject property for \$160,000. However, proof of the subject property's actual market value on January 1, 2009, as compared to January 1, 2010, value is necessary to show a change in value. Although the evidence Cole's property might be over-assessed if this were a regular assessment year, it does not demonstrate there has been a downward change in his property's value since the last assessment, which is necessary to prevail in an interim year.

### *Conclusions of Law*

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

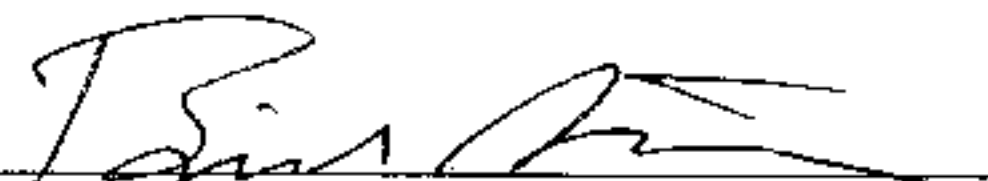
In a non-reassessment or "interim" year, when the value of the property has not changed, a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). The last unnumbered paragraph of Iowa Code section 441.37(1) and its reference to section 441.35(3) give rise to the claim of downward trend in value. For a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning

and final valuation. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997) The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

We find a preponderance of the evidence does not prove there has been a change in value of Cole's property since the last assessment.

THE APPEAL BOARD ORDERS that the January 1, 2010, assessment as determined by the Dallas County Board of Review is affirmed.

Dated this 10 day of August 2011.

  
Richard Stradley, Presiding Officer

  
Jacqueline Rypma, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8-10</u> , 2011.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature	